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SUSPENSE		17 February Date			

Remarks:

Please coordinate an Agency response
NLT 17 February.

Executive Secretary
25 Jan 82

Date

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Executive Registry

82-0209

OFFICE OF FEDERAL
PROCUREMENT POLICY

JAN 22 1982

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND
ESTABLISHMENTS

SUBJECT: Management, Control Over the Acquisition,
Management, and Use of Consulting and Other,
Similar Related, but Non-consulting, Services

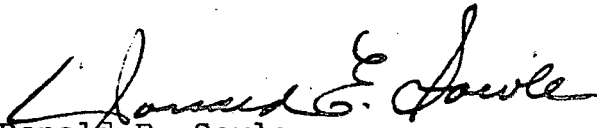
I am enclosing for your review and comment two proposed new OMB directives which were published for agency and public comment in the Federal Register, January 11, 1982.

The first directive revises and adds to the provisions of OMB Circular No. A-120, "Guidelines for the use of Consulting Services." The second, a new Bulletin, extends similar management controls employed by OMB Circular No. A-120 to the acquisition of certain management and professional services, special studies and analyses and management and support services for research and development activities. The requirements in this new Bulletin are completely compatible with the requirements of A-76.

The purpose of the new directives is to further tighten internal agency management controls over the use of the prescribed services, while demonstrating that the OMB will take whatever actions are deemed necessary to ensure that only those services that are necessary, justified, and appropriate will be procured and thereby negate the need for legislative controls.

We have scheduled a full 30-day review and comment period for these directives and I encourage you to provide your comments as soon as possible to assure that they are thoroughly considered. In order to further facilitate our analysis of your comments, I ask that they be concisely stated, and reference specific pages and paragraphs in the draft, where appropriate.

Your review of the new directives will be appreciated, and I look forward to receiving your comments. Questions concerning the drafts should be addressed to Fred Dietrich, Associate Administrator for Systems and Technology. He can be reached on 395-6810.


Donald E. Sowle
Administrator

Enclosures



OFFICE OF FEDERAL
PROCUREMENT POLICY

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

Invitation for Public Comment

Agency: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

Action: Request for comments on proposed revision to OMB Circular No. A-120, "Guidelines for the Use of Consulting Services."

Summary: The Office of Federal Procurement Policy is requesting public and Government agency review and comment on a proposed revision to OMB Circular No. A-120.

OMB Circular No. A-120, published April 14, 1980, established policy and guidelines to be followed by Executive Branch agencies in determining and controlling the appropriate use of consulting services. Agency management plans for controlling the use of consulting services, as required by the July 2, 1980, memorandum from the Director of OMB, include specific checks and balances to ensure adherence to the provisions of the Circular.

Analysis of implementation of the Circular and the management plans revealed that even tighter controls are needed to ensure that only those consulting services that are necessary, appropriate and justified are acquired.

This proposed revision revises certain sections of OMB Circular No. A-120 and establishes additional policy and guidelines to be followed by Executive Branch agencies in determining and controlling the appropriate acquisition, management and use of consulting services.

As a related action, a proposed OMB Bulletin adopting the management controls in the Circular to similar services is also being published for comment in this issue of the Federal Register.

Date: Comments must be received on or before (30 calendar days after publication in the Federal Register).

Address: Submit comments to the Office of Federal Procurement Policy, Office of Management and Budget, Room 9013, New Executive Office Building, 726 Jackson Place, N.W., Washington, D. C. 20503.

For further information contact: Mr. Fred H. Dietrich, Associate Administrator for Systems and Technology, (202) 395-6810.

Donald E. Sowle
Administrator

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: Guidelines for the use of Consulting Services

Transmitted herewith is an addition to Office of Management and Budget (OMB) Circular No. A-120, dated April 14, 1980.

1. Purpose: This transmittal memorandum revises certain sections of OMB Circular No. A-120 and establishes additional policy and guidelines to be followed by Executive Branch agencies in determining and controlling the appropriate acquisition, management and use of consulting services.

2. Background. OMB Circular No. A-120 establishes policy and guidelines to be followed by Executive Branch agencies in determining and controlling the appropriate use of consulting services. Agency management plans for controlling the use of consulting services, as required by the July 2, 1980 memorandum from the Director of OMB, include specific checks and balances to ensure adherence to the provisions of OMB Circular No. A-120.

3. Definitions:

a. Governmental functions. Certain functions are inherently governmental in nature being so intimately related to the public interest as to mandate performance by Federal employees. A "Governmental function" is a function which must be performed in-house due to a special relationship in executing governmental responsibilities. Such governmental functions can fall into several categories:

- (1) Discretionary application of Government authority, as in investigations, prosecutions and other judicial functions; in management of Government programs requiring value judgments, as in directing the national defense; management and direction of the Armed Services; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drug.
- (2) Monetary transactions and entitlements, as in Government benefit programs; tax collection and revenue disbursements by the Government; control of the public treasury, accounts, and money supply; and the administration of public trusts.

- (3) In-house core capabilities in the area of research, development and testing, needed for technical analysis and evaluation and technology base management and maintenance. However, requirements for such services beyond the core capability which has been established and justified by the agency are not considered governmental functions.

- b. Personal services. A personal services contract is characterized by the employee-employer relationship it creates between the Government and contractor personnel. Since the Government is normally required to obtain its employees by excepted appointment or under the competitive appointment procedures of the civil service laws, such a relationship violates those laws unless Congress has specifically authorized acquisition of the services by means of a personal services contract.

4. Policy.

- a. Paragraph 6.a. of OMB Circular A-120 is deleted and replaced with the following paragraph:

"6.a. Consulting services shall not be used to perform Governmental functions which must be performed by Government employees."

- b. Paragraph 6.b. of OMB Circular is deleted and replaced with the following paragraph:

"6.b. Consulting services arrangements shall not normally exceed 12 months in duration. Normally, any consulting services arrangement (contract, personnel appointment or advisory committee membership) which exceeds 12 months shall be treated as if it were a new consulting service arrangement and, accordingly, again subject to the review and approval requirements of OMB Circular No. A-120 (paragraph 8). However, if a program requires consulting services for a fixed period in excess of 12 months, it does not need to be subject to yearly review and approval, provided the original request covered the fixed period, contained appropriate justification, and the contract for the services was a multi-year or contained prepriced option periods."

- c. Paragraph 6 is amended to add the following subparagraphs:

"h. The award of sole source contracts to obtain consulting services as a result of unsolicited proposals is not appropriate. Therefore, when an agency receives an unsolicited proposal for consulting services, and determines it has a need for such services, a synopsis of the requirement shall be published in the Commerce Business Daily to determine if there are other qualified contractors interested in submitting a proposal. Qualified contractors shall be solicited.

"i. A consulting services contract shall not be used to obtain personal services.

"j. Contracting officers shall guard against subcontracting arrangements which would circumvent the controls in OMB Circular No. A-120 and this transmittal memorandum."

5. Action Requirements:
 - a. Agency heads shall be responsible for ensuring the policy in this transmittal memorandum is implemented.
 - b. Agencies listed at Attachment A shall update their management control plans for consulting services, as required by the July 2, 1980, memorandum, "Management Control of Consulting Service Contracts and Improvement of Agency Procurement Practices," to include checks and balances to ensure adherence to the additional policy in this transmittal memorandum.
 - c. The Secretary of Defense and the Administrator for General Services are directed to incorporate Section 4 into the Defense Acquisition Regulation and the Federal Procurement Regulations, respectively, within ninety (90) days of the date of this memorandum.
6. Effective Date: This transmittal memorandum is effective immediately.
7. Information Contact: Inquiries should be directed to the Office of Federal Procurement Policy, Office of Management and Budget, telephone (202)395-6810.

Attachment A

OMB Circular A-120

Transmittal Memorandum No. 1

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department State
Department Transportation
Department of the Treasury
Environmental Protection Agency
General Services Administration
National Aeronautics and Space Administration
Veterans Administration

Attachment A

OMB Circular A-120

Transmittal Memorandum No. 1

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
Department State
Department Transportation
Department of the Treasury
Environmental Protection Agency
General Services Administration
National Aeronautics and Space Administration
Veterans Administration



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OFFICE OF FEDERAL
PROCUREMENT POLICY

OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL PROCUREMENT POLICY

Invitation for Public Comment

Agency: Office of Federal Procurement Policy (OFPP), Office of Management and Budget.

Action: Request for comments on proposed OMB Bulletin.

Summary: The Office of Federal Procurement Policy is requesting public and Government agency review and comment on a proposed OMB Bulletin relating to controls over certain management and professional services, special studies and analyses and management and support services for research and development activities.

OMB Circular No. A-120, "Guidelines for the Use of Consulting Services," issued on April 14, 1980, established uniform Government-wide policy and guidelines to be followed by Executive Branch agencies in determining and controlling the appropriate use of consulting services. A July 2, 1980, memorandum from the Director of the Office of Management and Budget to the heads of selected Executive Departments and Establishments directed agencies to develop two management control systems: one for procurement in general, and one for consulting services in particular, to ensure that the requirements of OMB Circular No. A-120 are in fact, carried out in day-to-day operations.

In reviewing agency implementation of the Circular, the management control plans for consulting services, and examination of data from the Federal Procurement Data System (FPDS), it has been determined that many of the management problems associated with consulting services contracts are also prevalent in contracts for certain management and professional services, special studies and analyses, and management and support services for research and development activities. Accordingly, this Bulletin proposes that the management controls in OMB Circular No. A-120 and the agency management control plans for consulting services be adopted in these services.

As a related action, a revision to OMB Circular No. A-120 is also being published for public and Government agency comment in this issue of the Federal Register.

Date: Comments must be received on or before (30 calendar days after publication in the Federal Register).

Address: Submit comments to the Office of Federal Procurement Policy, Office of Management and Budget, Room 9013, New Executive Office Building, 726 Jackson Place, N.W., Washington, D. C. 20503.

For further information contact: Mr. Fred H. Dietrich, Associate Administrator for Systems and Technology, (202) 395-6810.

Donald E. Sowle
Administrator

Bulletin 81-__

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Management Controls for the Procurement of Certain Management and Professional Services, Special Studies and Analyses, and Management and Support Services for Research and Development Activities.

1. Purpose. This Bulletin establishes management controls to be followed by Executive departments and agencies when contracting for certain management and professional services, special studies and analyses, and management and support services for research and development activities.

2. Background.

a. OMB Circular No. A-120, "Guidelines for the Use of Consulting Services," issued on April 14, 1980, established uniform Government-wide policy and guidelines to be followed by Executive Branch agencies in determining and controlling the appropriate use of consulting services. A July 2, 1980, memorandum from the Director of the Office of Management and Budget to the heads of selected Executive Departments and Establishments directed agencies to develop two management control systems: one for procurement in general, and one for consulting services to ensure that the requirements of OMB Circular No. A-120 are in fact, carried out in day-to-day operations.

b. In reviewing agency implementation of OMB Circular No. A-120, the management control plans for consulting services, and examination of data from the Federal Procurement Data System (FPDS), it has been determined that many of the management problems associated with consulting services contracts are also prevalent in contracts for certain management and professional services, special studies and analyses, and management and support services for research and development activities. Accordingly, this Bulletin requires that the management controls in OMB Circular No. A-120 and the agency management control plans for consulting services be applied to these services.

3. Definitions:

a. Governmental functions. Certain functions are inherently governmental in nature being so intimately related to the public interest as to mandate performance by Federal employees. A "Governmental function" is a function which must be performed in-house due to a special relationship in executing governmental responsibilities. Such governmental functions can fall into several categories:

(1) Discretionary application of Government authority, as in investigations, prosecutions and other judicial functions; in

management of Government programs requiring value judgments, as in directing the national defense; management and direction of the Armed Services; conduct of foreign relations; selection of program priorities; direction of Federal employees; regulation of the use of space, oceans, navigable rivers and other natural resources; direction of intelligence and counter-intelligence operations; and regulation of industry and commerce, including food and drugs.

- (2) Monetary transactions and entitlements, as in Government benefit programs; tax collection and revenue disbursements by the Government; control of the public treasury, accounts, and money supply; and the administration of public trusts.
- (3) In-house core capabilities in the area of research, development and testing, needed for technical analysis and evaluation and technology base management and maintenance. However, requirements for such services beyond the core capability which has been established and justified by the agency are not considered governmental functions.

b. Personal services.

A personal services contract is characterized by the employee-employer relationship it creates between the Government and contractor personnel. Since the Government is normally required to obtain its employees by excepted appointment or under the competitive appointment procedures of the civil service laws, such a relationship violates those laws unless Congress has specifically authorized acquisition of the services by means of a personal services contract.

4. Coverage: This Bulletin applies to the following:

- a. Management and professional services are those procurement actions coded in the Product and Service Codes Manual of the Federal Procurement Data System as R401 through R499. The management controls in this Bulletin apply only to the following R400 procurement actions that are not identified as consulting services on the agency's data collection form (which conforms to the requirements of the FPDS), or Optional Form 279, for input into the FPDS.

MANAGEMENT AND PROFESSIONAL SERVICES

<u>FPDS Code</u>	<u>Description</u>
R406	Policy Review/Development Services
R407	Program Evaluation Services
R408	Program Management/Support Services
R409	Program Review/Development Services
R498	Other Professional Services
R499	Other Management Services

- b. Special studies and analyses are those procurement actions coded in the Product and Service Codes Manual of the Federal Procurement Data System as R501 through R599. The management controls in this Bulletin apply only to the following R500 procurement actions that are not identified as consulting services on the agency's data collection form, or Optional Form 279, for input into the FPDS.

SPECIAL STUDIES AND ANALYSES

<u>FPDS Code</u>	<u>Description</u>
R505	Cost Benefit Analyses
R506	Data Analyses (Other than scientific)
R507	Economic Studies and Analyses
R523	Legislative Studies
R528	Regulatory Studies
R531	Socio-economic Studies
R599	Other Special Studies and Analyses

- c. Management and Support Services for research and development activities are those services which meet the description of management and professional services (4.a.) and special studies and analyses (4.b.), but are funded with research and development (R&D) funds, and coded as research and development in the FPDS. For further information, see pp. 4 through 14 of the Product and Service Codes Manual of the Federal Procurement Data System, April 1980.

5. Policy:

- a. For each procurement action for services in paragraph 4 of this bulletin, and which is not a consulting service, agencies shall ensure that:
 - (1) Every requirement is appropriate and fully justified in writing. Such justification will provide a statement of need and will certify that such services do not unnecessarily duplicate any previously performed work or services;
 - (2) Work statements are specific, complete and specify a fixed period of performance for the service to be provided;
 - (3) Contracts are competitively awarded to the maximum extent practicable to ensure that costs are reasonable;
 - (4) Appropriate disclosure is required of, and warning provisions are given to, the contractor to avoid conflict of interest; and
 - (5) Contracts are properly administered and monitored to ensure that performance is satisfactory.
- b. Sole source contracts resulting from unsolicited proposals for management and professional services, and special studies and analyses and management and support services for R&D activities that meet the description of the services listed in paragraph 4 are generally not appropriate. Therefore, when an agency receives an unsolicited proposal for any of these services that are not truly unique and determines it has a need for such services, a synopsis of the requirement shall be published in the Commerce Business Daily to determine if there are other qualified contractors interested in submitting a proposal. An RFP shall be issued to qualified contractors.
- c. Personal Services shall not be obtained by contract for any of the services in paragraph 4 of this Bulletin.
- d. The services in paragraph 4 shall not be used to perform Governmental functions, which must be performed by Government employees.
- e. The services in paragraph 4 shall not be used solely to circumvent personnel ceilings.
- f. The services in paragraph 4 shall not be used, under any circumstances, specifically to aid in influencing or enacting legislation.
- g. Contracting officers shall guard against subcontracting arrangements which circumvent the policy in this Bulletin.

- h. Written approval of procurement requests for the services in paragraph 4 will be required at a level above the organization sponsoring the activity, up to agency head. In the fourth fiscal quarter, such approval will be required at two levels above the organization sponsoring the activity, up to agency head. Proposed procurement actions over \$100,000 shall be approved at the level of an Assistant Secretary or a designee.
- 6. Action requirements.
 - a. Agency heads shall be responsible for ensuring the policy in this Bulletin is implemented.
 - b. Contracting officers shall ensure that the appropriate FPDS code for the services in paragraph 4 is written in the Determinations and Findings (D&F) document prior to approval of the D&F.
 - c. Contracting officers shall ensure that the documentation required by this Bulletin (5.a.(1)(2) (4), and 5.h.) is accomplished and included in the official contract file.
 - d. To implement the new policy in this Bulletin, the Secretary of Defense and the Administrator for General Services are directed to incorporate the provisions in paragraph 5 of this Bulletin into the Defense Acquisition Regulation and the Federal Procurement Regulations, respectively, within ninety (90) days of the date of this Bulletin.
- 7. Effective Date. This Bulletin is effective immediately.
- 8. Information Contact. Inquiries should be directed to the Office of Federal Procurement Policy, Office of Management and Budget, telephone (202)395-6810.
- 9. Sunset Review Date. This Bulletin will expire on (one year from publication date of final Bulletin).